

Minutes of Regular Meeting of February 26, 2013
One Twin Pines Lane, Belmont, CA

CALL TO ORDER 7:30 P.M.

ROLL CALL

COUNCILMEMBERS PRESENT: Feierbach, Lieberman, Braunstein, Warden, Wozniak

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Scoles, City Attorney Rennie, Fire Chief Keefe, Deputy Fire Chief Gaffney, Community Development Director de Melo, Police Chief DeSmidt, Finance Director Fil, Human Resources Director Dino, Parks and Recreation Director Gervais, Deputy Finance Director Lazzari, Public Works Director Oskoui, Police Lieutenant Psaila, Police Lieutenant Halleran, City Treasurer Violet, City Clerk Cook

PLEDGE OF ALLEGIANCE

Led by Deputy Fire Chief Gaffney.

Mayor Wozniak noted that tonight's meeting will be adjourned in memory of Margaret Crist, the wife of former City Manager Jack Crist, who died unexpectedly. She pointed out that Mr. Crist led the City through some very difficult times and it was appropriate to honor Margaret this way.

SPECIAL PRESENTATIONS

Public Safety Update

Deputy Fire Chief Gaffney gave an update of the CPR, HazMat (Hazardous Materials) and Disaster Preparedness programs. He provided statistics regarding call volumes for 2012. He also provided an update of department activities including the status of renovations to Fire Station 15 and the CERT (Citizens Emergency Response Team), as well as an update on the transition plan with the Foster City/San Mateo partnership.

Police Chief DeSmidt described incident statistics for the Police Department, and noted that while the volume has increased, the number of arrests has decreased. He provided a highlight of major cases that took place in 2012. He described new programs including Project SAFE for schools, a new on-line reporting system, the STEP Program (Saturation Traffic Enforcement Program), and he noted that National Night Out would be take place again this year. He provided an update on staffing needs and outlined the potential for officers to be outfitted with video cameras.

Police Chief DeSmidt noted that outreach regarding the new on-line reporting system will be accomplished with a press release and the use of social media.

PUBLIC COMMENTS AND ANNOUNCEMENTS

Ali, Belmont resident, stated that City staff has been unreasonable regarding a neighbor's complaints regarding construction. She indicated that she has requested to meet with the City Manager and has not received a response.

City Manager Scoles noted that the speaker's issue is relative to a building permit and that the Building Official has met with the owner.

Kathleen Beasley, Belmont Library Manager, outlined a new film program being offered for adults and teens at the Belmont Library. She also noted that the annual Read Across America event would be held soon.

Andrew Williams, Belmont resident, expressed his appreciation to the City Council for the January 29th study session regarding the San Juan properties. He recommended providing simple options for these properties and suggested that the project is too small for a developer.

Perry Kennan, Belmont resident, expressed his appreciation to Councilmember Feierbach and Mayor Wozniak for voting against the allocation of funds for the Ralston Corridor Study. He expressed concern regarding the source of funding for this project. He pointed out that Ralston Avenue is used as a cut-through.

COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS

Councilmember Lieberman indicated that he would be missing the March 12th meeting due to a business trip, and that the March 26th meeting occurs during a religious holiday which will cause him to be absent. Councilmember Braunstein indicated that the religious holiday affected him as well.

AGENDA AMENDMENTS

Councilmember Lieberman suggested amending the agenda to consider Other Business Item C (Sewer Lateral Program) and Item B (Consideration of Amendment to Loan from Fleet Fund for San Juan Properties) before the mid-year Budget report, since there are people in attendance for both of those items.

Mayor Wozniak stated that the Budget discussion could affect the other items, and she suggested leaving the agenda as presented.

CONSENT CALENDAR

Approval of Resolution 2013-002 of the Belmont Fire Protection District Ratifying the Belmont-San Carlos Fire Department Budget for FY 2013 and FY 2014

Approval of Resolution 2013-023 of the City Council Authorizing a Purchase Order for Unleaded Gasoline and Diesel Fuel from Valley Oil Company for an Amount not to Exceed \$25,000

HEARINGS

Public Hearing of the City Council to Rescind Resolution No. 10089 and Adopt a New Resolution Approving a Revised Partial Vacation of Public Right-of-Way at Semeria Avenue and Casa Bona Avenue Adjacent to Semeria Park, (APN 044-042-180)

Public Works Director Oskoui stated that this action is intended to correct the land survey boundaries for the vacation of right-of-way that was executed for the Semeria Park Design. He clarified that no additional right-of-way is being vacated, and that the original documentation was never recorded due to the error in the survey.

Mayor Wozniak opened the Public Hearing. No one came forward to speak.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Braunstein, the Public Hearing was unanimously closed by a show of hands.

ACTION: On a motion by Councilmember Lieberman, seconded by Councilmember Braunstein, Resolution 2013-024 Rescinding Resolution No. 10089 and Adopt a New Resolution Approving a Revised Partial Vacation of Public Right-of-Way at Semeria Avenue and Casa Bona Avenue Adjacent to Semeria Park, (APN 044-042-180) was unanimously approved by a show of hands.

OTHER BUSINESS

Report on Mid-Year Financial Results - December 31, 2012 and a Resolution Amending the Fiscal Year 2013 Budget and Approving a Revision to Revenue and Supplemental Appropriation and the Permanent Staffing Plan

Finance Director Fil stated that the General Fund balance as of December 31, 2012 is higher than the previous mid-year balance, and that other funds are on track. He noted that the economy is in recovery. He pointed out that the State has been deferring the transmittal of local revenue receipts. He explained that it usually is received quarterly and is now received biannually, which affects cash flow. He stated that expenditures are also on track.

Finance Director Fil provided an overview of revenues and described budget variances. He noted that a number of factors have contributed to the variances, including the retirement of the Oracle loan, the reduced contribution to the Belmont-San Carlos Fire Department, sewer rehabilitation projects, the closeout of the 101 Bicycle Pedestrian Bridge project, the rehabilitation of Fire Station 15, and employee MOU's (Memoranda of Understanding).

City Manager Scoles provided an update of staffing, and explained that staff is still assessing the support needs for the City Manager, City Clerk, and City Attorney.

Finance Director Fil noted that the proposed mid-year budget adjustment will provide a platform for the development of next year's budget.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Lieberman, Resolution 2013-025 Implementing Revision to the City of Belmont Budget/Supplemental Appropriation and Permanent Staffing Plan was unanimously approved by a show of hands.

A Resolution of the City Council Authorizing Amendment No. 1 to the Advance from the City's Fleet and Equipment Management Fund to the Open Space Fund for the Acquisition of Certain Property in the San Juan Canyon

City Treasurer Violet explained the need to extend the term of the loan that was made from the Fleet Fund for the acquisition of properties in the San Juan Canyon. He noted that the original 30-month term expires on March 28, 2013, and it is recommended that this loan be extended for 18 months to September 28, 2014. He clarified that this extension will provide the City Council with time to determine the final disposition of the properties and to reimburse the funds. He pointed out that the interest rate is nominal at .3 percent (.3%), and the total cost for the original loan with the extension would be \$14,000.

Finance Director Fil explained that the loan can be prepaid at any time before expiration. In response to Council questions, he clarified that the Fleet Fund can sustain this loan for the proposed extension, and that beyond that, funding for capital needs could be impacted. He also explained that the high fund balance includes the fund note, and there is a potential for some large equipment replacement in the future. He confirmed that repayment of the loan is the ultimate goal.

Susan Lasell, Belmont resident, expressed concern regarding extending the loan into 2014 and suggested retiring the loan prior to the seating of a new City Council. She noted that there are more cost-effective solutions.

Michael Schmitz, San Mateo resident, requested that the public be advised of the City Council's options regarding this property as soon as possible. He stated that the loan extension is longer than is needed.

Aileen Turner, Belmont resident, stated that when the property was purchased in 2009, there were no negotiations for the terms of purchase. She requested clarification as to when the public was notified of the closed session action.

Mayor Wozniak stated that staff would provide a chronology regarding the purchase.

Perry Kennan, Belmont resident, expressed concerns about the use of the Fleet and Equipment Fund for this purpose. He stated that this fund should reduce to zero for operational expenditures at the end of the year. He suggested that the Finance Commission review this fund.

Councilmember Feierbach stated that she does not support an 18-month extension as it provides no impetus for disposing of the lots. She pointed out that respect is needed regarding the amount charged to each department for the Fleet Fund.

Community Development Director de Melo stated that the City Council will be presented with options at the March 12th Council meeting. He pointed out that any sale of property would be based on market conditions.

Councilmember Braunstein concurred that any sale is market driven, and there has not been any interest in this property to date. He expressed support for the 18-month extension and his desire to price the property at an amount that will enable repayment of the loan.

Councilmember Lieberman expressed support for a 12-month extension and his desire to move forward with this matter.

ACTION: On a motion by Councilmember Feierbach, seconded by Councilmember Lieberman, Resolution 2013-026 Authorizing Amendment No. 1 to the Advance from the City's Fleet and Equipment Management Fund to the Open Space Fund for the Acquisition of Certain Property in the San Juan Canyon was unanimously approved, as amended to extend for 12 months to February 26, 2014, by a show of hands.

Consideration of Sewer Lateral Program and Introduction of an Ordinance Implementing the Program

Public Works Director Oskoui provided background regarding Inflow and Infiltration (I and I) issues related to sewer laterals, and noted that the City Council gave direction in the spring of 2012 to implement a sewer lateral program to include the potential for requiring inspection at point of sale (POS). He outlined the components of the program, which includes smoke testing, FOG (Fats, Oils and Grease) containment, installation of backflow detectors, a permit-driven inspection program. He clarified that the City Council directed that any POS program have no impact on close of escrow. He noted that POS would provide an additional tool to capture problems with laterals.

Public Works Director Oskoui explained that I and I results in the unnecessary treatment of clean water, and can also lead to sewer backups. He pointed out that this creates additional costs to all users. He noted that the City of Belmont has been aggressive in its efforts to reduce I and I, and that other cities have a point of sale component to their program. He described the potential inspection options in order to achieve certification.

In response to Council questions, Public Works Director Oskoui clarified that a video inspection is required when a construction project results in renovations exceeding \$50,000 value, not when appliances or toilets are only being replaced. Community Development Director de Melo stated that the number of permits triggering this requirement is approximately three to five per month. Public Works Director Oskoui stated that City staff receives 150 to 200 calls annually for sewer backups.

Public Works Director Oskoui described similar permits in other cities and noted that none have a temporary certificate as is proposed in Belmont's program. He noted that none of the cities with POS provisions have indicated any issues with escrow as a result of the inspection requirement.

Councilmember Lieberman pointed out that the temporary certificate provision would provide more flexibility. He also noted that eight of nine cities require permit-driven inspections.

In response to Mayor Wozniak, Public Works Director Oskoui stated that the responsibility for the sewer lateral was transferred to homeowners in the 1990's. He explained that sewer spills can be very expensive, would result in fines levied on the city, as well as attorneys fees, the costs of which would be passed to ratepayers.

Mayor Wozniak pointed out that some real estate agents recommend that the homeowner have the lateral inspected and that some plumbers bill this cost to escrow. Public Works Director Oskoui stated that the City of South San Francisco requires a deposit to the City and will make the repair if the owner does not take care of it. City Attorney Rennie recommended not implementing this provision as it is a private property maintenance issue.

Councilmember Feierbach pointed out that most cities that require point of sale inspections have done so as a result of being fined by the Baykeeper association.

Michael Verdon stated that he does not support the point of sale requirement. He noted that only 2.3 percent of homes in Belmont are sold every year, and lenders have an issue with such

provisions. He pointed out that other components in the sewer lateral program are yielding good results and that a City-wide problem should not be addressed through a point of sale inspection requirement.

Peter Markovich, Belmont resident, stated that he does not support the point of sale program. He noted that there is minimal intrusion issues related to laterals. He noted that this proposal would provide a revenue stream for the City and would be a burden on seniors.

Paul Stewart, on behalf of SAMCAR (San Mateo County Association of Realtors), explained that all other cities who have a point of sale inspection requirement have had consent decrees issued against them. He noted that the City of San Mateo is considering a voluntary program. He recommended rejecting the POS requirement, and he expressed support for the other programs. He suggested a disclosure form could be utilized to inform the seller of the sewer lateral. In response to Councilmember Lieberman, Mr. Stewart indicated that a POS requirement can affect an all-cash offer or short sales.

Robert Stafford stated that the role of government should be responsibility for infrastructure and care for the environment. He expressed support for the ordinance as presented and noted that the obligation should be on the property owner regarding the sewer lateral.

Greg Bryant expressed support for a proactive approach to this issue, as well as flexibility. He pointed out that other cities waited for a consent decree to address sewer issues, and smoke testing does not identify all problems. He stated that future technology could improve monitoring, and that point-of-sale requirements are not proactive.

Phil Houston stated that point-of-sale requirements are ineffective since only 2.3 percent of homes are sold each year. He questioned the Baykeeper organization's support of the point-of-sale requirement to address sewer problems.

Raffi Sghomonian, Belmont resident, stated that he does not support the point of sale requirement. He pointed out that lenders are not likely to fund loans with this requirement. He requested data to support the I and I problem.

Perry Kennan, Belmont resident, stated that this issue affects sewer costs which is a cost to all ratepayers.

MEETING EXTENSION: at this time, being 10:30 p.m., on a motion by Councilmember Lieberman, seconded by Councilmember Feierbach, the meeting was unanimously extended by 30 minutes by a show of hands.

Jason Born, Belmont resident, stated that he had understood that if the cleanout was in the right of way or at the edge of the property, the lateral was the responsibility of the City. He expressed support for requiring a disclosure in the sales documents regarding laterals. He expressed concern regarding the certification requirement. He commented that this is intrusive and that it was inappropriate for a Councilmember to contact Baykeeper for support of this ordinance.

Ray Moreno, Belmont resident, stated that it is a burden on homeowners to address the sewer lateral that is located in the right of way.

Christine Fuller stated that agents uphold codes, and they address health and safety issues. She does not support the ordinance. She expressed concern that a short sale could turn into a foreclosure should there be a point of sale inspection requirement.

Adele Della Santina, Belmont resident, stated that the homeowner is responsible for pollutants. She noted that smoke testing has been effective. She pointed out that there are many disclosures at time of sale. She recommended that the City not be involved in a private sales transaction. She stated that point of sale should not be used for administering ordinances.

Public Works Director Oskoui clarified that I and I is a big issue, especially during heavy rain, and he noted that industry studies indicated that 30 to 60 percent of these issues are related to laterals. In response to Council questions, he stated that the City has been more aggressive in sewer maintenance, and it has a backlog of capital improvement needs. He also clarified that 15 to 20 percent of parcels with problems are identified through the smoke testing problem. He pointed out that smoke testing does not always identify problems.

Councilmember Lieberman stated that the City of Belmont has an aggressive lateral program. He expressed support for the permit-driven inspection program. He does not see the nexus to a point of sale requirement, and stated that this is arbitrary and could affect a home loan. He expressed support for a disclosure form in the sales document to advise prospective buyers of potential lateral issues.

MEETING EXTENSION: at this time, being 11:00 p.m., on a motion by Councilmember Warden, seconded by Councilmember Braunstein, the meeting was unanimously extended by 30 minutes by a show of hands.

Councilmember Warden stated that a solution is needed to address water intrusion into the sewer lateral. He pointed out that ratepayers bear the burden of I and I issues, and the City could be faced with a potential lawsuit if there is an overflow.

Councilmember Feierbach stated that she could support the point-of-sale inspection requirement if it allowed one year to complete the work. She does not support the inspection requirement for small appliance replacement. She does not want to wait for a lawsuit to implement this program.

Councilmember Braunstein stated that this issue is a matter of consumer protection, and people need to make informed decisions regarding the purchase of a home. He pointed out that the sewer lateral program does not provide for just one solution, and he supports all of the components of its program. He expressed the need to understand implications if the ordinance is enacted as he does not want unintended consequences. He also supports flexibility in the program. He expressed support for the point of sale and the permit-driven inspection. He does not support a mandate to repair the lateral prior to close of escrow.

Mayor Wozniak stated that she recognizes the concern of the real estate community. She noted that I and I is a public health issue that affects sewer rates. She concurred with the need for home buyers to be more informed. She requested more information regarding what other cities are doing.

City Attorney Rennie outlined options regarding how a real estate disclosure could be crafted, and that this issue is a matter of how long the City would give to repair the lateral. He noted that 180 days allows time for the new owner to address the situation, and following that time, the City could initiate code enforcement.

Discussion ensued regarding code enforcement if smoke testing identifies a problem with the lateral.

Councilmember Lieberman expressed support for requiring video testing with a remodel project. He pointed out that adding a bedroom usually reflects more people in the household. He noted that the City's infrastructure is responsible for some I and I problems, and it is difficult to require private owners to fix their own problems when the City Council made a policy decision not to address City-wide infrastructure needs.

Councilmember Braunstein noted that the City of Belmont has large infrastructure needs that should be addressed.

MEETING EXTENSION: at this time, being 11:30 p.m., on a motion by Mayor Wozniak, seconded by Councilmember Warden, the meeting was unanimously extended by 30 minutes by a show of hands.

Mayor Wozniak stated that she is not opposed to a point-of-sale requirement but wants more information as well as the flexibility with additional time for inspection.

Councilmember Lieberman expressed support for a point-of-sale disclosure form only.

ACTION: Councilmember Lieberman made a motion to direct staff to prepare a draft disclosure form for point of sale which does not mandate inspection. This motion received no second.

Councilmember Warden expressed support for mandating the inspection at point of sale. He expressed a desire to investigate options regarding the trigger for the permit inspection.

ACTION: On a motion by Councilmember Warden, seconded by Councilmember Braunstein, this matter was unanimously continued by a show of hands to a date uncertain.

RECESS: 11:45 P.M.

RECONVENE: 11:55 P.M.

MATTERS OF COUNCIL INTEREST/CLARIFICATION (item taken out of order)

Consideration of Council amending the conditional uses for HRO1, HRO2 and HRO3 Zoning (Feierbach)

Councilmember Feierbach expressed a desire to revise the permitted and conditional uses in the HRO1, HRO2, and HRO3 Zoning to be more in keeping with residential uses.

Councilmember Warden expressed concern that making this change would trigger a CEQA (California Environmental Quality Act) review.

City Attorney Rennie responded that a future staff report could clarify uses in those zones and how they are regulated. He clarified that a change in those uses could trigger an amendment to the General Plan, and that concerns regarding uses could be addressed without an amendment. He pointed out that the General Plan outlines that certain uses should be located on arterial or collector streets only, and he noted that this review would not likely trigger a CEQA review.

Discussion ensued.

Councilmember Warden expressed support for this matter as long as it does not hold up any other projects that the City Council is addressing or that have been on the pending list. Councilmember Braunstein stated he would like to see what level of effort would be needed to address this matter.

MEETING EXTENSION: at this time, being midnight, on a motion by Councilmember Warden, seconded by Mayor Wozniak, the meeting was extended by 15 minutes by a show of hands (3-2, Braunstein, Lieberman no).

Consideration of a request from the Community Coalition on High Speed Rail (CCHSR) for funding for Proposition 1A Litigation and Confirmation of City Council position regarding the Caltrain Modernization/California High Speed Rail (CHSR) Projects

Community Development Director de Melo noted that the Community Coalition on High Speed Rail (CCHSR) is requesting financial support to join the litigation, in the amount of \$5,000. He also stated that there is a desire for reaffirmation of the City's position regarding the Caltrain Modernization project.

Discussion ensued regarding the position points regarding Caltrain which made in previous letters on this subject.

ACTION: Councilmember Feierbach made a motion, seconded by Councilmember Warden, to allocate \$5,000 towards the CCHSR litigation.

Councilmember Lieberman expressed the need to work with other cities in San Mateo County as a coordinated effort regarding high speed rail. He does not support the expenditure of funds for this purpose.

Mayor Wozniak stated that this issue is more political than tactical. She pointed out that this litigation could help address provisions of Proposition 1A.

ACTION: On the previous motion, approved to allocate \$5,000 for funding for Proposition 1A Litigation (3-2, Braunstein, Lieberman no).

Council concurred to table the Caltrain Modernization position paper until the next meeting.

Verbal Report from City Manager

City Manager Scoles noted that the Off the Grid Food Truck weekly event began on February 25th. He also announced some upcoming nighttime sewer maintenance work forthcoming on Ralston Avenue.

COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS

Verbal report from Councilmembers on Intergovernmental (IGR) and Subcommittee Assignments

Councilmember Lieberman stated that he might be out of town for the next South Bayside System Authority (SBSA) meeting and would need to call upon Councilmember Warden, as the alternate, to attend.

Councilmember Braunstein stated that the NDNU (Notre Dame de Namur University) Advisory Board met recently and he would provide an update at a future meeting.

ADJOURNMENT at this time, being 12:15 a.m. in memory of Margaret Crist.

**Terri Cook
City Clerk**

Meeting audio-recorded and videotaped.